

## **MINUTES**

### **City of Franklin, Indiana BOARD OF ZONING APPEALS**

**April 6, 2016**

#### **Members Present:**

Phil Barrow	Vice-President
Jim Martin	Secretary
Richard Martin	Member
Brian Alsip	Member

#### **Members Absent:**

Tim Holmes	President
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#### **Others Present:**

Alex Getchell	Associate Planner
Lynn Gray	Legal Counsel
Joanna Myers	Senior Planner
Julie Spate	Recording Secretary

#### **Call to Order:**

Phil Barrow called the meeting to order at 7:00 pm.

#### **Approval of Minutes:**

Lynn Gray made a correction in the minutes on page three, last paragraph, to add “if the church” after “Ms. Gray asked Pastor Clayton and Counsel Swafford”. Jim Martin made a motion to approve the March 2, 2016 minutes as corrected by Ms. Gray. Rev. Martin seconded the motion. The members voted to approve the minutes.

#### **Swearing In:**

Lynn Gray swore in the audience en masse.

#### **Old Business:**

##### **ZB 2016-01 (UV/V) – Johnson County Community Corrections Center**

Alex Getchell introduced the case. The use variance request is to allow a community correctional facility use at the northeast corner of Hospital Road and Drake Road. The first developmental standards variance request is to reduce the number of parking spaces from the required 172 spaces down to 42 provided. The second developmental standards variance request is to not be required the perimeter parking lot landscaping along Drake Road on the west side of the property. The property is in the Mixed Use Community Center (MXC) zoning district. The application is complete and public notification requirements have been met.

David Hittle, Johnson County Planning and Zoning Director, presented. Mr. Hittle explained they are asking for three different variances, a use variance for an adult rehabilitation facility and two developmental standards variances, one for parking and one for landscaping. The property is at the northeast corner of Hospital and Drake. The facility would be located near the center of the site with parking flanking it to the west and south and a little to the north. The community corrections component would have their parking to the north and west and the public and administration components to the south. Landscaping is planned for around the perimeter of the property and internally. Mr. Hittle reviewed the Franklin parking ordinance requirements resulting in 172 required spaces. He stated the petitioner believes facility would only need 69 spaces, more than the 42 the site will provide, and is the reason a parking variance is requested. Mr. Hittle stated they would use the law enforcement center to the southwest for their additional parking needs, which their parking studies revealed on average 87 spaces available at any given time. Mr. Hittle maintained Franklin's parking requirements to be burdensome and compared them with Greenwood's requirement of 119 and Indianapolis at 110. Mr. Hittle went on to address staff's concern over the pedestrian travel path if the law enforcement center's parking lot was to be used. He found it would be very reasonable to use the greenway trail, the existing sidewalk network and to create a sidewalk from that parking lot, a crosswalk across the street to link up with the greenway, 610 feet site to site and 770 feet from site to door. Two streets would have to be crossed, Hospital Road which is lightly traveled and there is a three-way stop at the intersection of Hospital and Drake Roads. They are willing to install a sidewalk along the south side of Hospital Road, allowing to close the curb cut. This would also permit the crossing of only Hospital Road between the law enforcement parking lot and the community corrections facility.

Mr. Hittle went on to address the landscaping variance request. The reasons for this request are the 20-foot right of way along Drake Road and the need for buffering landscaping to the east along the residential area. These requirements reduce the buildable area of the property by more than 25 percent, 35 feet to the east and 30 feet including the front yard to the west. The county asked for 10 feet to be shaved off the 30-foot requirement to the west along the site's front yard along Drake Road. They requested doing away with the 10-foot shrub row requirement fronting Drake Road. Mr. Hittle reported offering to relocate the 10-foot shrub row to the west side of the sidewalk in the right of way, but staff responded that that is not desirable for the City. Mr. Hittle felt they have a foundation for this request as the bank site to the north provides a 20-foot width between the curb to the parking area, a few street trees and no sidewalk or shrub row. The county proposed a 30-foot width from the pavement edge to the beginning of the parking area along with the required street trees and a new sidewalk.

Ron West, Johnson County Commissioner, presented guests in attendance at the meeting, and asked for more presentation time. The Board granted the additional time. Mr. West reviewed House Bill 1006 and 1269. 1006 mandates local judges to keep anyone sentenced to 365 days or less. 1269 mandates local officials to get anyone in city jail for 30 days or more onto Medicaid and in treatment. Mr. West went on to cite numerous national and program related statistics. No other sites have been seriously considered due to the proximity concerns with the jail (meals & assistance), Johnson Memorial Hospital (resident treatment & testing) and Adult & Child Mental Health (services & drug addiction evaluations). They also plan to bring a drug and alcohol program and probation department into this facility. This would eliminate a lot of foot traffic. This property was owned by the hospital and then deeded to the county. A jail expansion is likely in the near future, so the current juvenile detention facility could be used in the jail expansion. A new site for juvenile detention would be built at the current site of community corrections. An off-site location would cost an additional \$225,000 annually and capital

costs around \$75,000. This doesn't include land and utilities. This would also allow for the sale of the Key Bank building and conversion of it back to a tax-paying entity.

Ms. Gray asked Mr. Hittle to return and present their case for the meeting of the statutory criteria. Mr. Hittle noted that findings were submitted for both use and developmental variances standards, and he requested they be adopted by the Board. The Board was presented with copies of the petitioner's findings, which were then read individually by each member.

Mr. Barrow opened the public hearing by calling for any additional parties wishing to speak for the case. Franklin Attorney Andy Baldwin spoke in support due to the improvement of something that already exists in this community and the offering of a unique program on the local level that is only currently offered by the state. Mr. Baldwin stated the concerns of neighboring residents should fall on deaf ears, because the jail was located across Hospital Road when they moved there.

Mr. Barrow called for any individuals wishing to speak against the case. Rob Henderson, District 2 representative on Johnson County Council, spoke against the location only. He believes an alternate site is viable even to the point of selling Key Bank and this lot which would substantially offset the cost of any other land purchase even in an area requiring only a special exception use rather than a variance use. The lack of vetting such a sight Mr. Henderson finds very disturbing. Constructing a facility outside of city limits and less residential would be substantially cheaper. It could be a much simpler design in such an area with the same program and services outcome. He spoke to the proximity arguments, not seeing those as vital concerns. The residences near there did not buy into their property knowing this facility with 160 inmates residing on the second floor would be there. Mr. Henderson called for the Board to adhere to the Comprehensive Plan adopted in 2013 and support the staff's recommendation.

Mr. West brought rebuttal, repeating his financial concern if an offsite location, which as a self-funded operation, the increased cost would not be able to be absorbed. Meals are walked over and they do walk uncuffed to the hospital. Many leave in the morning to go to their jobs and return of an evening on their own recognizance. Mr. West concluded with additional statistics and appeal.

The public hearing was closed. Staff rendered their report. Mr. Getchell offered a letter received from Miss Eileen Page for the record. Ms. Gray corrected that anything presented such as findings of fact, the letter from the homeowner and the staff findings are part of the record. Mr. Getchell presented staff's recommendation of denial for both the use variance and the developmental standards variances. He reported staff's belief that the general welfare will be affected and the proposed use would be injurious to the public health, safety and morals of the general welfare. There is an underlying incompatibility of use with the property immediately adjacent. The size of their use staff deems exorbitant, too large and intense for the requested property. There is a severe deficiency in parking, even a 27 space deficiency from their own stated need. At least 27 people a day will walk 700+' to get to the property, which does not account for visitors or inmate being picked-up. He stated there is the inability to adequately buffer from the incompatible uses for the residences to the east, thus being injurious to the general welfare.

Mr. Getchell went on to state the severe deficiency in provided parking would result in numerous individuals parking at City View Shoppes and Apartments. Mr. Getchell supported this claim by sharing information gained at the January 14, 2016 special public meeting held by the petitioner, where the City View Apartments owner reported that inmates were already being picked up from their parking lot. Mr. Getchell also stated that City View Apartments has repeatedly asked for permission to increase the size of their parking lot. He stated that bringing more inmates closer to the City View Shoppes & Apartments will have a substantial effect on adjacent properties.

Mr. Getchell stated a peculiar situation does not exist, as a number of permitted uses, of an appropriate size, could be developed on the property without the need for variances.

Mr. Getchell stated staff does not believe an unnecessary hardship exists, as the previously stated uses could occur on this property. The First Financial Bank to the North is located on a lot less than half the size of the subject lot, and would be a permitted use on this lot.

Mr. Getchell stated approval of the use variance would substantially interfere with the Comprehensive Plan. The proposed use is not supported next to residential property, in all of the Comprehensive Plan recommendations. Mr. Getchell stated that the use cannot be adequately buffered due to the size of the proposed build on this site.

Speaking to the developmental standards variances, Mr. Getchell reported that the shortfall of 130 spaces would definitely be injurious to the public health, safety and morals of the general welfare. Staff believes it would cause an adverse effect to the adjacent properties as it would cause a substantial increase in parking demand on those properties and severely harm the surrounding businesses and residences. Staff finds the only Practical difficulty created could be seen as self-imposed, as the petitioners are proposing too large of a development for the property.

Mr. Getchell reminded the Board that only one criteria not being met is enough for denial.

Mr. Barrow called for any questions from the Board to staff. Mr. Barrow asked if the parking ordinance states how close parking must be. Mr. Getchell answered 500 feet. Brian Alsip asked if any conditions would be included if approval were granted. Mr. Getchell reported staff has not drafted any conditions for approval. Joanna Myers reported staff concerns, as stated by City Engineer Travis Underhill, that to address the parking situation, pedestrian crossings would likely be required. Richard Martin asked about the drainage ditch with the parking development and where the water will go. Rev. Martin also cannot imagine that parking for the corrections facility would not happen at the shops.

Mr. West responded that the drainage ditch would remain, improved and maintained. Rev. Martin asked if it was city or county owned and Mr. West said the county would maintain it. He furthered offered that the residents don't have visitors. Mr. Barrow asked if they weren't permitted, and Mr. West confirmed they are, but they just don't have them. Parking is available at the current community corrections facility lot and to the east at the highway department building lot. There would be a sidewalk and crosswalk only across Hospital Road, not Drake Road. Employees will be required to park offsite. Mr. West countered that the planning department requires parking spaces based on square footage of the building, but the third floor is unoccupied and will only be used for classes. The 50 employees identified work over three shifts so are not all there at any one time. Mr. West went on to try to report on property values. Ms. Gray instructed that it was beyond the scope of the question, so Mr. Alsip followed up and asked about the effect on adjacent property values. Mr. West believes no building built on that site would increase the property values of the adjacent properties. At best a neutral effect, but not a positive effect. Mr. Alsip identified that as the concern, that a build could possibly have a negative effect on the adjacent properties. He further asked if he had any national or state statistics about this kind of facility built next to a residential area having a neutral effect instead of a negative effect. Mr. West did not.

Mr. Barrow asked if employees would be forced by rule to park elsewhere. Mr. West confirmed that they would park off-site, other than handicapped parking. Mr. Alsip asked if residents would be

required to park elsewhere. Mr. West explained only 10 residents have cars and they would be mandated to park offsite as well. Mr. Barrow asked if the gas pump area would become parking.

Ms. Myers asked if the gravel lot in front of community corrections was what Mr. West was referring to. Mr. West identified employee parking area on the PowerPoint slide. Ms. Gray redirected the board to ask any additional questions of the petitioner or the staff.

Mr. Alsip asked if any other city locations have off-site parking like is being considered tonight. Ms. Myers said not to this magnitude. Madison Street Salvage has some directly across the street is the only one staff is aware of. Ms. Myers further explained this site has not been through technical review committee yet, so it could impact the design of the facility. Tonight's presentation is a draft only. She added offsite parking is required to be designated and staff recommends that means it should be paved, striped and signed accordingly. The current area is gravel. Also, mentioned this evening was that the existing community corrections facility where they are proposing off-site parking, might be converted to juvenile detention. The Planning Department also considered what sort of direct impact the change of use to juvenile detention would have on the requests presented this evening.

Rev. Martin wondered if there is enough information for a vote tonight. He was in support of the program but thinks it is too large a building on too small a parcel of land. Ms. Myers expressed staff's belief that the information is complete enough for the variances being submitted and that all of them should be denied based on previously stated criteria. Mr. Alsip asked if approved, what reasonable conditions would be accepted. Ms. Gray responded on behalf of staff that no conditions were made. Ms. Myers confirmed staff had not drafted any conditions, based on the firm belief the request does not meet the state criteria and the use variance should be denied at this location.

Rev. Martin asked about a light in the future at Hospital Road. Ms. Myers responded there used to be a flashing light that has been removed and is currently a three-way stop. Mr. Getchell added that the City Engineer in attendance was shaking his head no, that a light will not go in there. Mr. Alsip asked if this were to be approved with conditions of paving a lot, putting in a sidewalk, building pedestrian walkways, would the County accept these conditions. Mr. West said they would comply with whatever the City would require. Mr. Barrow asked if there would be a problem putting in the sidewalk on the south side of the property. Mr. West said there would not.

Mr. Alsip made a motion to approve the use variance supported by the general welfare not being injured by such a facility at the location. He asked if this was enough support for the motion, but Ms. Gray instructed that he had five criteria to address. Mr. Alsip went on in his motion to state that no evidence was presented that the adjacent property will be substantially effected in an adverse manner, the peculiar condition is that the proposed use for this property is already in the area, a denial would create an unnecessary hardship as the county has no other options at this time and there is no substantial interference with the Comprehensive Plan. Mr. Barrow seconded to keep the motion moving forward. A roll call vote was taken. Mr. Martin voted no. Rev. Martin voted no. Mr. Barrow voted no. Mr. Alsip voted yes. The motion to approve the use variance failed.

Mr. Alsip made a motion to continue. Rev. Martin seconded. Mr. Martin voted no. Rev. Martin voted yes. Mr. Barrow voted yes. Mr. Alsip voted yes. The motion to continue the use variance passed.

Ms. Gray asked if the County wished to move ahead with the developmental standards variances or did they prefer for all to be continued together. Mr. West asked for it all to be continued at the same time.

He also asked if there is additional information the Board was seeking. Ms. Gray asked Mr. West's question again directly to Mr. Alsip. Mr. Alsip did not have any additional information he was looking for but just wanted to keep the motion from being denied, so he moved to continue. Mr. West asked how any additional information needed would be communicated to the county. Ms. Gray explained they can submit anything to the staff and make sure it's provided to the Board members.

Mr. Alsip moved to continue the developmental standards variances. Mr. Barrow seconded. Motion passed.

### **New Business:**

#### **ZB 2016-05 (V) – IN Franklin Morton, LLC**

Mr. Getchell introduced the case. It is a developmental standards variance by Indiana Franklin Morton, LLC. The property is on the west side of North Morton Street behind Sherwin-Williams, Arby's, PNC and just north of the new Kroger Marketplace being developed. The developmental standards variance request is to allow 85.5% lot coverage in the MXC and gateway overlay districts. It is needed as maximum lot coverage allowed is 75%. It will require a waiver as the applicant has not received the affidavit of notice from The Daily Journal that it was advertised on time but staff did see it in the paper. Ms. Gray asked the applicant if they could verify that it was mailed to The Daily Journal. The applicant confirmed. Mr. Getchell also added they sent letters via certified mail instead of certificate of mailing. Ms. Gray explained this to be additional notice than what is required, so a motion is required to approve.

Jim Martin made a motion to accept the form of mailing. Mr. Alsip seconded. Passed.

Mr. Alsip made a motion to accept the applicant's and staff's testimony instead of the publisher's affidavit. Mr. Barrow seconded. Passed.

Brad Schoeff with Weihe Engineers presented regarding the RealtyLink parcel. RealtyLink proposed a two lot multi-tenant retail development on approximately 8.69 acres. The site is bound by the Kroger to the south, a shared common space detention pond to the north, commercial to the east and a cinema and a vacant residential property to the west. The 8.69 acres will contain seven tenant spaces making up over 92,000 sq. ft. The issues faced were an assortment of utilities not in the easements and the amount of parking required by the ordinance. The parking has been able to be reduced down to ordinance level. The site currently contains the minimum 397 parking spaces. The 75/25% split on the open space required was accommodated by the reduction of 20 parking spaces and converting that to additional islands and the enlargements of existing islands. Collectively they meet landscaping requirements of the quantities of planting materials. The open space to the north is also owned by RealtyLink and is not able to be taken into consideration.

Mr. Barrow opened the public hearing by asking if anyone wished to speak for or against the case. There being none, the public hearing was closed. Mr. Barrow ask for any discussion from the Board. Rev. Martin asked about the retention pond's location and the drainage it cares for. Mr. Schoeff confirmed it is sized to convey Kroger and RealtyLink drainage. Ms. Gray reminded they will still have to go through Technical Review to work out all the details. Mrs. Myers state the request has gone before Technical Review Committee. The committee asked for the reduction of parking spaces and conversion to open space, which they did in preparation for this meeting. Mrs. Myers spoke to TRC's review of this project on March 31. The replatting to include the out parcel will go before Plan Commission April 19. Mr. Schoeff reminded that Kroger had this same issue. They too took the overall landscape plantings and placed them on the property.

Mr. Getchell presented staff's changed recommendation from the original staff report due to the addition of more landscaping. Staff recommends approval with one condition of separate review and approval of signage. Mr. Schoeff responded this is acceptable to the petitioner.

Mr. Martin made a motion to approve with condition a as presented in the staff report. The motion was seconded by Mr. Alsip. The motion passed.

**Other:**

City Engineer Travis Underhill presented the extensive effort Mrs. Myers and Mr. Getchell had put in to the first case and asked if there is anything further this Board expects from Planning and Engineering. Ms. Gray explained to the Board that ex parte communications are not permitted, no one being allowed to have contact with them to try to influence their decision. Individual Board members can request additional information or ask questions from the staff or can ask staff to get information from the petitioner for them. There can be no deliberation between Board members.

**Adjournment:**

There being no further business, the meeting was adjourned at 8:50pm.

Respectfully submitted this 4th day of May, 2016.

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Tim Holmes, President

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Jim Martin, Secretary